

HEALTH INFORMATION TECHNOLOGY EXCHANGE OF CONNECTICUT

PARTICIPATION AGREEMENT (this “Agreement”)

SUMMARY

PARTICIPANT NAME (a “Participant”)	
ADDRESS	
CONTACT NAME(S)	
TELEPHONE NUMBER(S)	
FACSIMILE NUMBER(S)	
ELECTRONIC MAIL ADDRESS(ES)	

BACKGROUND

A. **HEALTH INFORMATION TECHNOLOGY EXCHANGE OF CONNECTICUT (“HITE-CT”)** is a quasi-governmental agency of the State of Connecticut whose purpose is to create, maintain and make available information exchange technology to enrolled healthcare participants located in the State of Connecticut in order to allow such participants to transfer electronic data, documents and records regarding patients in connection with participants’ healthcare services (the “Exchange”).

B. Participants in the Exchange include Data Recipients (as defined below), who or which may be Health Care Providers (as defined below) that will, through the Exchange, access Data (as defined below) from Data Suppliers (as defined below) who or which will provide Data through the Exchange. A Participant in the Exchange may be both a Data Recipient and a Data Supplier as described below:

	DATA RECIPIENT: Participant is a Data Recipient that will participate in the Exchange to obtain health care information for a Permitted Use (as defined below).
	DATA SUPPLIER: Participant is a Data Supplier that makes or will make Data available for access by Data Recipients (such as Health Care Providers (as defined below) and Authorized Users (as defined below)) for a Permitted Use.
	BOTH: Participant is both a Data Recipient and a Data Supplier.

HEALTH INFORMATION TECHNOLOGY EXCHANGE OF CONNECTICUT

AGREEMENT

1. **HITE-CT Activity.** HITE-CT will manage and administer the Exchange subject to the terms and conditions of this Agreement (as defined below) and applicable laws and regulations. HITE-CT agrees to fulfill the obligations of the Exchange as set forth in this Agreement.

2. **Participant Activity.** Participant, in its capacity as a Data Recipient and/or its capacity as a Data Supplier, as applicable, will participate in the transmission of Data through the Exchange and the submission or use of such Data, as applicable, subject to this Agreement.

3. **Complete Agreement.** This Participation Agreement includes, and incorporates by reference (all of which shall be deemed to be included in the definition of “**Agreement**” for all purposes hereunder):

- The *Summary* pages
- **Exhibit A** (*Terms and Conditions*)
- **Exhibit B** (*HIPAA Business Associate Agreement*)
- **Exhibit C** (*HITE-CT Fees*)
- Any Project Addenda (as defined below) attached to this Agreement and signed by the HITE-CT and Participant
- The HITE-CT Policies and Standards found at <http://www.hitect.org> (as amended from time to time and in effect, the “**Policies and Standards**”).

4. **Effective Date.** The “**Effective Date**” for this Agreement is _____. This Agreement will continue until terminated as set forth in Section 10 of **Exhibit A**.

IN WITNESS WHEREOF, the parties have executed and delivered this Agreement and hereby agree to the terms and conditions of this Agreement.

HITE-CT

HEALTH INFORMATION TECHNOLOGY
EXCHANGE OF CONNECTICUT

By: _____
(signature)

Print Name:
Title:
Date:

PARTICIPANT

Participant Name: _____

By: _____
(signature)

Print Name:
Title:
Date:

EXHIBIT A

TERMS AND CONDITIONS

1. DEFINITIONS.

“**Authorized User**” means an individual authorized by HITE-CT or by a Data Recipient under this Agreement to use the Exchange to access Data for a Permitted Use. An “**Authorized User**” also may be a Health Care Provider.

“**BAA**” means the Business Associate Agreement between HITE-CT and Participant, in the form set forth in **Exhibit B**.

“**Data**” means any and all data or information accessed through the Exchange, including without limitation Protected Health Information (as defined by the BAA) and Individually Identifiable Health Information (as defined by the BAA).

“**Data Exchange**” means electronically providing or accessing Data through the Exchange.

“**Data Recipient**” means an individual or entity who or which has entered into an HITE-CT Participation Agreement and whose Authorized Users will receive Data using the Exchange. A “**Data Recipient**” also may be a Data Supplier and/or a Health Care Provider.

“**Data Supplier**” means an individual or entity, such as a hospital, physician, clinical laboratory, pharmacy claims aggregation company, governmental agency or other entity which makes Data available for access through the Exchange and has entered into an HITE-CT Participation Agreement. A “**Data Supplier**” also may be a Data Recipient and/or a Health Care Provider.

“**Health Care Provider**” means a physician, group practice, hospital or health system, or other health care organization or professional, who or which provides treatment to Healthcare Consumers and has entered into an HITE-CT Participation Agreement. A “**Health Care Provider**” also may be a Data Supplier, a Data Recipient and/or an Authorized User.

“**Healthcare Consumer**” means a person that is the receiver of health related services and that is a person in a health information system. Any person who uses or is a potential user of a health care service, subjects of care may also be referred to as patients, health care consumers or subject of cares. [ISO TS22220]. In the US, this may be referenced as an “individual”, which means the person who is the subject of protected health information.

“**Participant**” means a Data Recipient and/or Data Supplier who or which has entered into a HITE-CT Participation Agreement, including the Participant named as a party to this Agreement.

“**Permitted Use**” means the collective permitted uses of the Exchange as set forth in the Policies and Standards.

“**Project Addendum**” means an exhibit to this Agreement, signed by the HITE-CT and Participant, which describes a specific project for use of the Exchange, applicable timelines, deadlines and schedules, respective responsibilities and related terms. Future projects, phases or expanded use of the Exchange also will be set forth in Project Addenda signed by HITE-CT and Participant.

2. HITE-CT OBLIGATIONS.

2.1. Services Provided by HITE-CT.

(a) Exchange Operation. HITE-CT will maintain and operate the Exchange. HITE-CT may, at its sole discretion, contract with subcontractors to maintain and operate the Exchange or to provide support services therefor.

(b) Access to Exchange for Permitted Use. HITE-CT will make the Exchange available to Participants, including:

(i) Data Recipients and their Authorized Users, who may access Data through the Exchange only for a Permitted Use; and

(ii) Data Suppliers and their authorized users that provide Data for access by Data Recipients through the Exchange.

HITE-CT may, at its sole discretion, establish arrangements with other health information exchanges to allow Data Recipients and data suppliers access to additional Data for a Permitted Use.

(c) Exchange Availability. HITE-CT will make all commercially reasonable efforts to make the Exchange available to Participants 24 hours a day, 7 days a week; provided, however, that the Exchange’s availability may be temporarily suspended for maintenance or unscheduled interruptions, or for other reasons outside of HITE-CT’s reasonable control. HITE-CT will use its commercially reasonable efforts to provide reasonable advance notice of any such suspension or interruptions of the Exchange’s availability and to restore the Exchange’s availability. Data Recipients who or which are Health Care Providers are responsible for obtaining patient health information through other means during any periods when the Exchange is not available.

(d) Support Services. During the term of this Agreement, HITE-CT will provide support services to assist Participant in the installation, implementation, and maintenance of the Software (as defined in Section 9.1(a) of this **Exhibit A**) and use of the Exchange, and may establish a fee schedule for these services which will be posted at <http://www.hitect.org>. The Exchange help desk will be available at the number and for the hours set forth at <http://www.hitect.org>. All support services will be subject to the HITE-CT fees set forth in Section 6 of this **Exhibit A** or posted at <http://www.hitect.org>.

2.2. Exchange Records; Use of Data.

(a) HITE-CT Records. HITE-CT will maintain records relating to the operation of the Exchange, including records of the date, time and records accessed by a Data Recipient in each Data Exchange as set forth in its Policies and Standards. Unless otherwise required by a Project Addendum, HITE-CT will not be obligated to maintain, and will not be responsible for maintaining, records of the content of any Data Exchange or inspecting the content of Data.

(b) HITE-CT Use and Disclosure of Information. HITE-CT will not disclose Data or information relating to Data Exchanges to third parties except as may be permitted by, and pursuant to, the BAA.

2.3. Policies and Standards. HITE-CT will establish the Policies and Standards which will govern the respective activities of HITE-CT and Participant on the Exchange, and these Policies and Standards will be available at <http://www.hitect.org> [About Us/Policies]. HITE-CT encourages Participant to provide input in the development of Policies and Standards through HITE-CT working groups and committees. These Policies and Standards govern the use by HITE-CT and Participant of the Exchange and the use, submission, transfer, access, privacy and security of Data.

(a) Changes to Policies and Standards. HITE-CT may change or amend the Policies and Standards from time to time at its sole discretion, and shall post notice of proposed changes, as well as any final changes, at <http://www.hitect.org> [About Us/Policies]. HITE-CT may, but is not obligated to, provide Participants notice of such changes to Policies and Standards by electronic mail. Any changes to any Policies and Standards will be effective sixty (60) days following adoption by HITE-CT, unless HITE-CT determines that an earlier effective date is required to address a legal requirement, a concern relating to the privacy or security of Data or an emergency situation. HITE-CT also may postpone the effective date of a change to any Policies and Standards if HITE-CT determines, in its sole discretion, that additional implementation time is required. Participant will not have any ownership or other property rights in any materials or services provided by HITE-CT.

(b) Security. HITE-CT will implement Policies and Standards that are reasonable and appropriate to provide that all Data Exchanges are authorized to protect Data from improper access, tampering or unauthorized disclosure and to secure compliance with applicable laws and regulations. Such Policies and Standards will include administrative procedures, physical security measures, and technical security services that are reasonably necessary to secure the Data. HITE-CT shall comply with the security Policies and Standards established by HITE-CT.

2.4. Obligations to Comply with Law. HITE-CT will comply with all applicable federal, state and local laws, including, without limitation, Title XII, Subtitle D of the Health Information Technology for Economic and Clinical Health (HITECH) Act, codified at 42 U.S.C. §§ 17921-17954 (the “HITECH Act”), and regulations issued to implement the HITECH Act,

which are applicable to business associates, as of the date by which business associates are required to comply with such referenced statutes and regulations.

3. DATA RECIPIENT OBLIGATIONS. The obligations set forth in this Section 3 of this **Exhibit A** shall apply to Participant that is a “Data Recipient” as described on the *Summary* pages of this Agreement. The obligations set forth in this Section 3 of this **Exhibit A** shall not apply to Participants that is a “Data Supplier” as described on the *Summary* pages of this Agreement, as those Participants will not have access to the Data in the Exchange.

3.1. Data Exchange. By engaging in any Data Exchange, Data Recipient acknowledges and agrees that its participation in such Data Exchange, and use of the Exchange by Data Recipient and its Authorized Users, shall comply with the terms of this Agreement and applicable federal, state and local laws and regulations, including, without limitation, the HITECH Act, and regulations issued to implement the HITECH Act. Data Recipient also represents, warrants and agrees that Data Recipient has secured, and shall ensure, any required Healthcare Consumer consent (e.g. obtain consent or verify through look-up or automated processing that consent has already been obtained), or provide notices, as required by Policies and Standards, to access the Data Exchange as set forth in Section 3.4 of this **Exhibit A**.

3.2. Permitted Use. Data Recipient shall use, and ensure that its Authorized Users use the Exchange only for a Permitted Use. Data Recipient shall comply, and shall ensure that its Authorized Users comply, with this Agreement and all applicable federal, state and local laws and regulations, including without limitation those governing the use, privacy and security of Data received through the Exchange. Data Recipient will decide, in its discretion, whether to use the Exchange, and the extent to which it will use the Exchange.

3.3. Authorized Users. Data Recipient shall, in accordance with the Policies and Standards, identify and authenticate its Authorized Users, who may use the Exchange for a Permitted Use on behalf of Data Recipient, prior to any use of or access to the Exchange by such Authorized User. Data Recipient shall ensure that all Authorized Users are only those individuals who require access to the Exchange to facilitate Data Recipient’s use of the Data for a Permitted Use. Participant shall be responsible for its Authorized Users complying with the terms and conditions of this Agreement and federal, state and local laws and regulations, including without limitation those governing the use, privacy and security of Data received through the Exchange.

3.4. Healthcare Consumer Permission for Data Exchange and Treatment; Notice. The parties acknowledge that certain uses of Data, including without limitation “**Treatment**”, “**Payment**” and certain “**Health Care Operations**” (each as defined by the HIPAA Standards for Privacy of Individually Identifiable Health Information, 45 C.F.R. Part 164, Subpart E) may not require specific consent by a Healthcare Consumer under HIPAA or applicable law. However, the data recipient will have the ability to verify consent within the HIE as required by the Policies and Standards, as identified in a Project Addendum, or as otherwise required by law.

3.5. System Operations. Data Recipient, at its own expense, shall provide and maintain the equipment, software, services and testing necessary to effectively and reliably

participate in the Exchange as set forth in the Policies and Standards, except for such equipment, software, services and testing expressly provided by HITE-CT pursuant to Section 9 of this **Exhibit A**.

3.6. Documentation of Information for Healthcare Consumer Treatment; Record Retention, Storage and Backup. If Data Recipient is a Health Care Provider, Data Recipient shall: (a) maintain, at its own expense, records of Data accessed through the Exchange and used by Health Care Provider for Treatment of any Healthcare Consumer for all time periods required by law; and (b) determine the form for such records, which may include incorporation of Data into Health Care Provider's medical record electronically, by hard copy or by other form of summary, notation or documentation.

3.7. Privacy, Security and Accuracy. Data Recipient shall maintain sufficient safeguards and procedures, in compliance with the Policies and Standards, and all applicable laws and regulations, to maintain the security and privacy of Data received through the Exchange. Data Recipients shall comply with the security Policies and Standards established by HITE-CT.

4. DATA SUPPLIER OBLIGATIONS. The obligations of this Section 4 of this **Exhibit A** shall apply to Participant that is a "Data Supplier" as described on the *Summary* pages of this Agreement. The obligations of this Section 4 of this **Exhibit A** shall not apply to Participant that is a "Data Recipient" as described on the *Summary* pages of this Agreement.

4.1. Data Exchange and Data Submission. By engaging in any Data Exchange, Data Supplier acknowledges and agrees that: (a) its participation in such Data Exchange shall comply with the terms of this Agreement and all applicable laws and regulations; (b) the Data provided or transferred by Data Supplier can be related to and identified with source records maintained by Data Supplier; (c) Data Supplier shall secure all authorizations for the submission of Data as set forth in Section 4.3 of this **Exhibit A**; and (d) Data Supplier shall make Data available for the Exchange in accordance with the scope, format and specifications set forth in the Policies and Standards.

4.2. Permitted Use. Data Supplier shall use, and shall ensure that its employees, workforce, and agents shall use, the Exchange only to provide Data for a Permitted Use. Data Supplier shall comply, and shall ensure that its employees, workforce, and agents comply, with this Agreement and all applicable federal, state and local laws and regulations, including without limitation those governing the use, privacy and security of Data made available to the Exchange.

4.3. Authorized Users. Data Supplier shall, in accordance with the Policies and Standards, identify and authenticate its Authorized Users, who may use the Exchange for a Permitted Use on behalf of Data Supplier, prior to any use of or access to the Exchange by such Authorized User. Data Supplier shall ensure that all Authorized Users are only those individuals who require access to the Exchange to facilitate Data Supplier's use of the Data for a Permitted Use. Participant shall be responsible for its Authorized Users complying with the terms and conditions of this Agreement and federal, state and local laws and regulations, including without limitation those governing the use, privacy and security of Data received through the Exchange.

4.4. Healthcare Consumer Permission for Data Submission and Data Exchange.

The parties acknowledge that certain uses of Data, including without limitation Treatment, Payment and certain Health Care Operations, may not require specific consent by a Healthcare Consumer under HIPAA or applicable law. However, Data Supplier shall be responsible for securing any consent to supply a Healthcare Consumer's Data to the Exchange required by the Policies and Standards, as identified in a Project Addendum, or as otherwise required by law.

4.5. Data Return. HITE-CT does not store or maintain Data other than eMPI, document repository hosting, and document registry, and any obligation to return any Data transferred to or accessed through the Exchange shall be pursuant to the BAA.

4.6. Data Provided; System Operations.

(a) Systems Necessary to Participate in Exchange. Data Supplier shall provide and maintain the equipment, software, services and testing necessary to effectively and reliably submit Data for access through the Exchange as set forth in the Policies and Standards, except for such equipment, software, services and testing expressly provided by HITE-CT pursuant to Section 9 of this **Exhibit A**. The respective financial responsibilities of Data Supplier and HITE-CT in making such Data available and for providing and maintaining the equipment, software, services and testing are set forth in the Policies and Standards.

(b) Record Retention, Storage and Backup. Data Supplier, at its own expense, shall maintain Data backup and retention as necessary to maintain adequate records of Data (other than continuity of care and other document summaries and Data registries) submitted to the Exchange for access by Data Recipients.

(c) Privacy, Security and Accuracy. Data Supplier shall maintain sufficient safeguards and procedures, in compliance with the terms of this Agreement, the Policies and Standards and all applicable laws and regulations, to maintain the security, privacy and accuracy of Data. Data Supplier shall, pursuant to the Policies and Standards, promptly correct any errors discovered in any Data that it transmits to the Exchange through document or demographic update/replacement. Data Supplier shall comply with the security Policies and Standards established by HITE-CT.

5. IMPLEMENTATION MEETING. The Participant and HITE-CT shall periodically meet, as needed, (virtually, telephonically or in person) at mutually agreed upon times to review the status and direction of their relationship and the Exchange, and any issues of concern to either party regarding the matters that are the subject of this Agreement (each a "**Implementation Meeting**"). All details regarding time, manner, place and agenda for such Implementation Meetings shall be decided in good faith by the parties. Within thirty (30) days after their full execution of this Agreement, the Participant and HITE-CT shall meet at the initial Implementation Meeting to agree upon the Project Addendum for the Participant's implementation with the Exchange, which Project Addendum shall include, without limitation, the respective responsibilities and deadlines applicable to each of the parties.

6. COMPLIANCE WITH LAWS; CONFIDENTIALITY.

6.1. Each of HITE-CT and Participant shall comply, and shall ensure that its respective agents and employees comply, with all applicable federal, state and local laws and regulations, including without limitation those governing the use, privacy and security of Data, Healthcare Consumer consent for the use and transfer of Data and requirements for Data Exchanges. Each of HITE-CT and Participant shall maintain, and shall ensure that its respective agents and employees maintain, the confidentiality of Data as required by all applicable federal, state and local laws and regulations. HITE-CT's use of Data will be subject to this Agreement and the BAA.

6.2. Each of the parties (a) acknowledges that in receiving, storing, processing, or otherwise dealing with any information from a Data Supplier which operates a drug and alcohol rehabilitation program (the "**Program**") about the Healthcare Consumers in the Program, it is fully bound by the provisions of the federal regulations governing Confidentiality of Alcohol and Drug Abuse Patient Records, 42 C.F.R. Part 2, and (b) undertakes to resist in judicial proceedings any effort to obtain access to information to any such Healthcare Consumers otherwise than as expressly provided for in the federal confidentiality regulations, 42 C.F.R. Part 2.

7. FEES AND PAYMENT. In consideration for HITE-CT's provision of the Exchange, Participant shall pay HITE-CT the fees as set forth on **Exhibit C**.

8. PROPRIETARY INFORMATION. During the term of this Agreement, each party may have access to information about the other party that (a) relates to past, present or future business activities, practices, protocols, products, services, information, content, and technical knowledge, and (b) has been identified as confidential (collectively, as to each party, its "**Proprietary Information**") by such party. For the purposes of this provision, Proprietary Information shall not include Data, the confidentiality of which shall be governed by the BAA.

8.1. Non-Disclosure. Each party (in such capacity, the "**Receiving Party**") shall: (a) hold the Proprietary Information of the other party (in such capacity, the "**Disclosing Party**") in strict confidence; (b) not make the Proprietary Information of the Disclosing Party available for any purpose other than as specified in this Agreement or as required by law, court order or subpoena; and (c) take reasonable steps to ensure that the Proprietary Information of the Disclosing Party is not disclosed or distributed by the Receiving Party's employees, agents or consultants/contractors (who will have access to the same only on a "need-to-know basis) to third parties in violation of this Agreement. If the Receiving Party receives a request, order or demand from any third party (including any court order or subpoena) for disclosure of any Proprietary Information of the Disclosing Party, the Receiving Party shall notify the Disclosing Party of the request, and the Disclosing Party shall have an opportunity to seek a protective order limiting the nature and scope of the information to be disclosed, and the Receiving Party is only permitted to so disclose Proprietary Information of the Disclosing Party to the extent required by law.

8.2. Exclusions. Proprietary Information of the Disclosing Party shall not include information that: (a) at the time of disclosure to Receiving Party, is known or becomes known or available to general public through no act or omission of the Receiving Party; (b) was in the Receiving Party's lawful possession before it was provided to Receiving Party by the Disclosing Party; (c) is disclosed to the Receiving Party by a third party having the right to make such disclosure; or (d) is independently developed by the Receiving Party without reference to the Disclosing Party's Proprietary Information.

8.3. Equitable Remedies. The parties acknowledge and agree that a breach of this Section 8 of this **Exhibit A** will cause the Disclosing Party substantial and continuing damage, the value of which will be difficult or impossible to ascertain, and other irreparable harm for which the payment of damages alone will be inadequate. Therefore, in addition to any other remedy that the Disclosing Party may have under this Agreement, at law or in equity, in the event of such a breach or threatened breach by the Receiving Party of the terms of this Section 7 of this **Exhibit A**, the Disclosing Party will be entitled, after notifying the Receiving Party in writing of the breach or threatened breach, to seek both temporary and permanent injunctive relief without the need to prove damage or post bond.

9. SOFTWARE LICENSE.

9.1. Right to Use.

(a) HITE-CT hereby grants to Participant for the term of this Agreement a royalty-free, non-exclusive, non-transferable, non-assignable, non-sub-licensable, and limited right to use the software identified by HITE-CT in its Policies and Standards for the sole purpose of participating in the Exchange under the terms and conditions of this Agreement ("**Software**"). **THE SOFTWARE SHALL NOT BE USED BY PARTICIPANT, OR ANY OF ITS EMPLOYEES, CONSULTANTS/CONTRACTORS, AUTHORIZED USERS AND/OR OTHER AGENTS, FOR ANY OTHER PURPOSE WHATSOEVER, AND SHALL NOT OTHERWISE BE COPIED OR INCORPORATED BY PARTICIPANT, OR ANY OF ITS EMPLOYEES, CONSULTANTS/CONTRACTORS, AUTHORIZED USERS AND/OR OTHER AGENTS, INTO ANY OTHER COMPUTER PROGRAM, HARDWARE, FIRMWARE OR PRODUCT. THE SOFTWARE IS LICENSED "AS-IS" AND HITE-CT DISCLAIMS ANY AND ALL REPRESENTATIONS AND WARRANTIES OF ANY KIND, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, OR TITLE.**

(b) Participant acknowledges and agrees that the Software may have been, or may in the future be, licensed to HITE-CT by third party(ies), and that the license granted under this Agreement is subject in every respect to the terms, conditions and limitations of any such license granted to HITE-CT by any such third party(ies). If any additional software shall be developed by or on behalf of HITE-CT for use with or in the Exchange, such additional software shall become subject to this Agreement as "**Software**" hereunder upon HITE-CT's delivery of written notice to Participant, and any such notice shall constitute an amendment to this Agreement and any applicable Project Addendum, and shall be binding upon the parties and subject to all terms and conditions of this Agreement.

(c) This Section 9 of this **Exhibit A** shall apply only to Software that is licensed by HITE-CT to Participant, and shall not apply to any other software that Participant may use in providing treatment to Healthcare Consumers or for Participant's business operations.

9.2. No Transfer or Modification. Participant shall not sell, rent, sublicense or otherwise share in, and shall ensure that none of its employees, consultants/contractors, Authorized Users or other agents sell, rent, sublicense or otherwise share in, Participant's right to use Software as licensed under this Section 9 of this **Exhibit A**. Participant shall not, and shall ensure that all of its employees, consultants/contractors, Authorized Users and other agents do not, modify, reverse engineer, decompile, disassemble or otherwise attempt to learn the source code or structure of the Software, or the ideas upon which Software is based.

10. TERM AND TERMINATION.

10.1. Term and Termination. The initial term of this Agreement will begin on the Effective Date and will continue until the [____ (____)] anniversary of the Effective Date, unless sooner terminated as set forth in this Section 10 of this **Exhibit A**. Upon the expiration of the initial term, or any renewal term, this Agreement shall automatically renew for [____ (____)] year (i.e. 365 day) periods, unless either party notifies the other of non-renewal at least [____ (____)] days prior the expiration date of the applicable initial term or renewal term; subject, for each renewal term, to earlier termination as set forth in this Section 10 of this **Exhibit A**.

(a) **Violation of Law or Regulation.** If either HITE-CT or Participant determines that its continued participation in this Agreement or the Exchange would cause it to violate any law or regulation applicable to it, or would place it at material risk of suffering any sanction, penalty, or liability, then such party may terminate its participation in this Agreement and/or the Exchange immediately upon written notice to the other party.

(b) **For Cause.**

(i) If HITE-CT determines that Participant or any of its employees, consultants/contractors, Authorized Users and/or other agents has breached any this Agreement, then HITE-CT may terminate Participant's participation in this Agreement and the Exchange on thirty (30) days' advance written notice to Participant; provided that such notice shall identify such breach, and such breach shall not have been cured within fifteen (15) days after receipt of the notice of breach. Notwithstanding the foregoing, HITE-CT may immediately terminate this Agreement upon written notice to Participant if HITE-CT determines that Participant or any of its employees, consultants/contractors, Authorized Users and/or other agents have used Data or the Exchange for any purpose other than the Permitted Use or in violation of security or privacy provisions under this Agreement or applicable laws and regulations.

(ii) If Participant determines that HITE-CT or any of its employees, consultants/contractors and/or other agents has breached any this Agreement in any respect other than a breach of BAA, which shall be governed by Section 10.1(b)(iii) below, then Participant

may terminate its participation in this Agreement and the Exchange on thirty (30) days' advance written notice to HITE-CT; provided that such notice shall identify such breach, and such breach shall not have been cured within fifteen (15) days after receipt of the notice of breach.

(iii) Upon a breach of the BAA by HITE-CT or any of its employees, this Agreement shall terminate pursuant to the terms and conditions of the BAA.

(c) Without Cause. HITE-CT or Participant may terminate this Agreement without cause upon thirty (30) days' advance written notice of termination to the other party; provided that, if Participant terminates without cause, it shall be responsible to pay to HITE-CT on or before the termination date a lump sum termination fee equal to the lesser of (i) the aggregate amount of Fees (as defined in **Exhibit D**) which would be payable for the remainder of the then existing term of this Agreement if not terminated and (ii) the Program Fees (as defined in **Exhibit D**) which would be payable for the [60-day] period immediately following the termination date if this Agreement had not been terminated. For avoidance of doubt, Participant shall not be entitled to any refund, as a result of termination of this Agreement without cause, of any Fees paid by Participant to HITE-CT, including the paid Onboard Fees (as defined in **Exhibit D**) and any paid Program Fees.

(d) Insufficient Funding. The Participant, acknowledging that this Agreement is funded in whole or in part by funds secured from the state government, agrees that should there be a reduction or discontinuance of such funds by action of the state government, HITE-CT shall have, in its sole discretion the right to terminate this Agreement in whole or in part. Any such termination shall take effect upon the date set forth in a written notice thereof to the Participant.

10.2. Termination Process and Access to Exchange and Data. Upon the effective date of termination of this Agreement, HITE-CT will cease providing access to the Exchange to the Participant and its Authorized Users, and Participant shall cease use, and shall ensure that its employees, consultants/contractors, Authorized Users and other agents shall cease use, of the Exchange.

10.3. Effect of Termination.

(a) Rights and Duties. Any termination of this Agreement shall not alter the rights or duties of the parties with respect to Data Exchanges transmitted before the effective date of the termination or with respect to fees outstanding and payable under this Agreement. Upon termination of this Agreement, (i) Sections 8, 10.1, 10.2, 10.3(b), 11 and 12 of this **Exhibit A**, (ii) the BAA and (iii) any other obligations that by their nature extend beyond termination, cancellation or expiration of this Agreement, will survive such termination, cancellation or expiration and remain in effect.

(b) Return of Proprietary Information; Software; Fees. Within thirty (30) days after the effective date of termination of this Agreement, each party will return to the other all Proprietary Information belonging to the other or certify the destruction of such Proprietary Information if agreed to by the Disclosing Party. Within thirty (30) days after the effective date

of termination of this Agreement, Participant shall de-install and return to HITE-CT all software (including the Software) provided by HITE-CT to Participant under this Agreement. If Participant has prepaid any Fees as of the effective date of termination of this Agreement, Participant will be entitled to a pro rata refund of such advance payment, unless this Agreement was terminated by HITE-CT for breach pursuant to Section 10.1(b)(i) of this **Exhibit A** or terminated by Participant without cause pursuant to Section 10.1(c) of this **Exhibit A** (and subject, however, to Section 12.3(a)(iii) of this **Exhibit A**). No Data shall be returned to a Data Supplier upon termination of this Agreement.

11. LIMITED WARRANTIES AND DISCLAIMERS. HITE-CT will use its commercially reasonable efforts to transmit Data Exchanges between Participants on a timely basis. HITE-CT makes no representation or warranty that the Data delivered to the Participant will be timely, correct or complete. **HITE-CT MAKES NO WARRANTY OR REPRESENTATION REGARDING THE ACCURACY OR RELIABILITY OF ANY INFORMATION TECHNOLOGY SYSTEM USED FOR THE EXCHANGE. HITE-CT EXPRESSLY DISCLAIMS ALL WARRANTIES REGARDING ANY PRODUCT, SERVICES OR RESOURCES PROVIDED BY IT, OR DATA EXCHANGES TRANSMITTED, PURSUANT TO THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, ANY EXPRESS OR IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR TITLE.**

12. LIMITATION OF LIABILITY; INDEMNIFICATION.

12.1. Limitations of Liability.

(a) Neither HITE-CT nor Participant shall be liable to the other for lost profits or Data, or any special, incidental, exemplary, indirect, consequential or punitive damages (including loss of use or lost profits) arising from any delay, omission or error in a Data Exchange or receipt of Data, or arising out of or in connection with this Agreement, whether such liability arises from any claim based upon contract, warranty, tort (including negligence), product liability or otherwise, and whether or not either party has been advised of the possibility of such loss or damage.

(b) **IF THERE SHALL, NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, AT ANY TIME BE ANY LIABILITY ON THE PART OF HITE-CT BY VIRTUE OF THIS AGREEMENT, OR THE PERFORMANCE OR NON-PERFORMANCE OF ITS RESPONSIBILITIES UNDER THIS AGREEMENT, OR BY VIRTUE OF A BREACH BY HITE-CT OF ANY REPRESENTATION OR WARRANTY CONTAINED HEREIN, WHETHER DUE TO THE NEGLIGENCE OF HITE-CT OR OTHERWISE, PARTICIPANT AGREES THAT, IN NO EVENT, WILL THE TOTAL AGGREGATE LIABILITY OF HITE-CT FOR ANY CLAIMS, CAUSES OF ACTION, LOSSES OR DAMAGES EXCEED THE FEES PAID BY PARTICIPANT TO HITE-CT UNDER THIS AGREEMENT.**

(c) HITE-CT shall not be liable to the Participant for any losses, liabilities or damages as a result of HITE-CT terminating this Agreement under Section 10.1(d) of this **Exhibit A** (Insufficient Funding).

(d) The foregoing limitations of liability is complete and exclusive, shall apply even if HITE-CT or Participant has been advised of the possibility of such potential

claims, causes of action, losses or damages, and shall apply regardless of the success or effectiveness of any other remedies possessed by Participant or third parties. This limitation of liability reflects an allocation of risk between HITE-CT and Participant in view of the Fees charged by HITE-CT to Participant. The limitations of this Section 12.1 of this Exhibit A shall apply notwithstanding any failure of essential purpose of any limited remedy.

12.2. Release of Liability. Participant hereby releases HITE-CT from any claim arising out of any inaccuracy or incompleteness of Data or any delay in the delivery of Data or failure to deliver a Data Exchange when requested except for those arising out of HITE-CT's gross negligence.

12.3. Indemnification.

(a) HITE-CT Indemnification for Infringement.

(i) HITE-CT shall defend, indemnify and hold Participant harmless from and against any and all claims, lawsuits, and other civil actions or proceedings commenced by any third party ("**Third Party Claims**") against Participant, and any and all damages, awards, losses, liabilities, settlements, judgments, (including, without limitation, interest awards, reasonable litigation costs, and reasonable attorneys' fees awards) ("**Losses**") incurred by Participant, including without limitation amounts payable under judgment, court order or settlement resulting from any Third Party Claim, to the extent that such Third Party Claim and/or Losses results from actual or alleged infringement by the Software of any third party's rights. In connection with any such Third Party Claim, Participant shall:

(A) notify HITE-CT in writing of the Third Party Claim as promptly as practicable but in any event, within a period that will not prejudice the rights of HITE-CT under this Agreement or the ability of HITE-CT (or its third party licensors) to defend the Third Party Claim; and

(B) allow HITE-CT (or its third party licensors) sole control of the defense and any related settlement negotiations, at HITE-CT's sole cost and expense; and

(C) use commercially reasonable efforts to cooperate in good faith in the said defense and comply with all of HITE-CT's (or its licensors') reasonable requests (at HITE-CT's sole cost and expense) in defending or settling the Third Party Claim.

(ii) Should the use of the Software by the Participant pursuant to this Agreement be determined to have infringed any third party's rights, or, if in HITE-CT's (or its licensors') reasonable judgment, such use is likely to be infringing, HITE-CT shall endeavor at its option do any of the following, at its own expense (x) procure for Participant the right to continue owning or using the Software, as applicable, or (y) replace or modify the Software to make its use by Participant non-infringing while yielding substantially equivalent functionality.

(iii) If, and only if, the previous options are not commercially reasonable, then HITE-CT may terminate this Agreement as it applies to the specific Software and the corresponding rights of use. Participant agrees to destroy or return the affected Software to HITE-CT (or as otherwise directed by HITE-CT) on its written request, and HITE-CT will then return and refund any prepaid Fees paid by the Participant as prorated on a daily basis over a five (5) year term commencing on the Effective Date.

(iv) The obligations of HITE-CT in this Section 12.3(a) of this Exhibit A shall not apply to the extent that the infringement or claim thereof is based on (i) use of the Software by Participant other than in accordance with this Agreement, or as otherwise agreed to or recommended by HITE-CT, or (ii) modifications or additions to the Software by Participant personnel. THIS SECTION 12.3(A) OF THIS EXHIBIT A SETS FORTH THE PARTICIPANT'S EXCLUSIVE REMEDY FOR ANY ACTUAL OR ALLEGED INFRINGEMENT OF THIRD PARTY RIGHTS IN CONNECTION WITH THE SOFTWARE.

(b) Indemnification for Breach of Agreement. Participant shall indemnify, defend and hold HITE-CT, and its employees, representatives and agents, harmless from and against any and all Third Party Claims against HITE-CT, or any of its employees, representatives or agents, and any and all Losses incurred by HITE-CT, or any of its employees, representatives or agents, including without limitation amounts payable under judgment, court order or settlement resulting from any Third Party Claim, to the extent that such Third Party Claim and/or Losses results or arises from breach of this Agreement by Participant or any of its employees, consultants/contractors, Authorized Users and/or other agents, including the unauthorized or improper use of the Exchange and/or use or disclosure of Data for any purpose other than a Permitted Use.

12.4. Not a Medical Service. The Exchange does not make clinical, medical or other decisions, and is not a substitute for professional medical judgment applied by Participant or its employees, consultants/contractors, Authorized Users and/or other agents.

13. GENERAL PROVISIONS.

13.1. No Exclusion. HITE-CT represents and warrants to Participant, and Participant represents and warrants to HITE-CT, that neither such party nor any of its respective employees or agents has been (a) placed on the sanctions list issued by the office of the Inspector General of the Department of Health and Human Services pursuant to the provisions of 42 U.S.C. 1320a(7), (b) excluded from government contracts by the General Services Administration or (c) convicted of a felony or any crime relating to health care. Each of HITE-CT and Participant shall provide the other with immediate written notice of any such placement on the sanctions list, exclusion or conviction.

13.2. Severability. If any term or provision of this Agreement is found to be invalid or unenforceable for any reason, it shall be adjusted rather than avoided, if possible, so as best to accomplish the objective of the parties to the extent possible. In any event, the remaining terms and provisions shall be deemed valid and enforceable. It is expressly understood and agreed that

each provision of this Agreement providing for a limitation of liability disclaimer or limitation of warranties or exclusion of damages is intended by the parties to be severable and independent of any other provisions and to be enforced as such.

13.3. Entire Agreement. This Agreement (which includes the *Summary* pages, all Exhibits and Project Addenda, and the Policies and Standards as amended from time-to-time) constitutes the complete agreement of the parties relating to the matters specified in this Agreement and supersedes all earlier representations or agreements with respect to the subject matter of this Agreement, whether oral or written with respect to such matters.

13.4. No Assignment. Participant may not assign its rights or obligations under this Agreement without the advance written consent of HITE-CT, which consent will not be unreasonably withheld, provided that Participant may assign this Agreement without consent in connection with a transfer or assignment to a wholly-owned subsidiary of Participant, or a parent which wholly-owns Participant. Any assignment by Participant in violation of this Section 13.4 shall be deemed null and void and of no legal force or effect for purposes of this Agreement.

13.5. Governing Laws; Jurisdiction. This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of Connecticut without regards to any conflict of law principles that would require the application of laws of any other state. Any legal action or proceeding with respect to this Agreement shall be brought only in the courts of the State of Connecticut or of the United States of America for the District of Connecticut. By execution and delivery of this Agreement, each of the parties hereto accepts for itself and in respect of its property, generally and unconditionally, the jurisdiction of the aforesaid courts.

13.6. Force Majeure. No party is liable for any failure to perform its obligations under this Agreement (other than payment obligations), where such failure results from any act of God or other cause beyond such party's reasonable control (including, without limitation, any mechanical, electronic, or communications failure).

13.7. Notices. All notices, requests, demands, and other communications required or permitted under this Agreement will be given in writing. A notice, request, demand, or other communication will be deemed to have been duly given, made and received: (a) when personally delivered; (b) on the day specified for delivery when deposited with a commercial courier/delivery service such as Federal Express for delivery to the intended addressee; (c) three (3) business days following the day when deposited in the United States mail, registered or certified mail, postage prepaid, return receipt requested, addressed as set forth below on the first *Summary* page of the Agreement; or (d) when sent, if sent by electronic mail (without response of non-delivery) or confirmed facsimile if sent during normal business hours of the recipient, and if not sent during normal business hours, then on the recipient's next business day. Nothing in this Section 13.7 will prevent the parties from communicating via electronic mail, telephone, facsimile, or other forms of communication for the routine administration of the Exchange.

13.8. No Agency. All decisions regarding effectuation of this Agreement and any action to be taken hereunder shall be solely at the discretion of the party making such decision. Neither party shall hold itself out as an agent of the other. Neither party shall have any authority

to bind or obligate the other in any manner. For the purpose of carrying out this Agreement, the parties shall act as independent contractors and not as the partner, joint venturer, or agent of the other party and neither party shall bind or attempt to bind the other party to any contract. Furthermore, the undersigned Participant shall not (i) hold itself out as an agent of any other Participant, or (ii) have any authority to bind or obligate any other Participant in any manner.

13.9. No Relationship between Participants; No Third Party Rights. Except as otherwise expressly provided in this Agreement (including, without limitation, in connection with indemnification rights), nothing in this Agreement confers any rights or remedies under this Agreement on any persons other than HITE-CT and Participant. Nothing in this Agreement is intended to create a contractual relationship or otherwise affect the rights and obligations among Participants. Nothing in this Agreement will give any third party, including other Participants, any right of subrogation or action against any party to this Agreement.

13.10. Counterparts; Electronic Signatures. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. This Agreement may also be executed and delivered by facsimile or other electronic signature and in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Neither party will contest the validity or enforceability of this Agreement as electronically signed, or signed in counterparts, under the provisions of any applicable law relating to whether certain agreements are to be in writing or signed by the party to be bound thereby. This Agreement, as electronically signed, if introduced as evidence on paper in any judicial, arbitration, mediation, or administrative proceedings will be admissible as between the parties to the same extent and under the same condition as other business records originated and maintained in paper form.

13.11. Waivers. The failure of either party any time to require performance by the other party of any provision hereof shall not affect in any way the full right to require such performance at any time thereafter; nor shall the waiver by either party of a breach of any provision hereof be taken or held to be a waiver of the provision itself. The observance of any provision of this Agreement by any party may be waived (either generally or any particular instance and either retroactively or prospectively) only with the written consent of the other party.

13.12. Further Actions. Each party to this Agreement agrees to execute and deliver all documents and to perform all further acts and to take any and all further steps that may be reasonably necessary to carry out the provisions of this Agreement and the transactions contemplated hereby.

13.13. Warranty Disclaimers. Each party recognizes and agrees that the warranty disclaimers and liability and remedy limitations in this Agreement are material bargained-for-bases of this Agreement and that they have been taken into account and reflected in determining the consideration to be given by each party under this Agreement and in the decision by each party to enter into this Agreement.

13.14. Amendments. This Agreement may be amended (either generally or any particular instance and either retroactively or prospectively) only with the written consent of the parties; provided, however, that, pursuant to Section 2.3 of this **Exhibit A**, the Policies and Standards may be amended by HITE-CT at its discretion without any consent, written or otherwise, of any Participant.

13.15. Late Payments. Any payment to any party under this Agreement that are not paid on the date that such payment is due, including without limitation any overdue payments of royalties, shall accrue interest, commencing on the date that such payment was originally due, at the prime rate of interest as quoted in *The Wall Street Journal* (or, if not published, another appropriate publication), but, in no event, at a rate less than 1% per month.

13.16. Rules of Usage. In this Agreement, unless a clear intention appears otherwise: (a) the singular number includes the plural number and vice versa; (b) reference to any person includes such person's successors and assigns but, if applicable, only if such successors and assigns are not prohibited by this Agreement, and reference to a person in a particular capacity excludes such person in any other capacity or individually; (c) reference to any gender includes each other gender; (d) reference to any agreement, document or instrument means such agreement, document or instrument as amended or modified and in effect from time to time in accordance with the terms thereof; (e) reference to any law means such law as amended, modified, codified, replaced or reenacted, in whole or in part, and in effect from time to time, including rules and regulations promulgated thereunder; (f) "hereunder," "hereof," "hereto," and words of similar import shall be deemed references to this Agreement as a whole and not to any particular Section or other provision hereof; (g) "including" (and with correlative meaning "include") means including without limiting the generality of any description preceding such term; (h) "or" is used in the inclusive sense of "and/or"; (i) with respect to the determination of any period of time, "from" means "from and including" and "to" means "to but excluding"; (j) references to documents, instruments or agreements shall be deemed to refer as well to all addenda, exhibits, schedules or amendments thereto; (k) references to "person" or "persons" means an individual, corporation, limited liability company, partnership, trust, joint venture or other legal entity; (l) article and section headings herein are for convenience only and shall not affect the construction hereof; and (m) references to any sections of this Agreement shall include every subsection thereof unless otherwise expressly excluded.

EXHIBIT B

HIPAA Business Associate Agreement

THIS AGREEMENT is made this ____ day of _____, 2012, by and between _____, located at _____ ("Covered Entity"), and the Health Information Technology Exchange of Connecticut, located at 101 East River Drive, East Hartford, Connecticut 06108 ("Business Associate").

WHEREAS, Business Associate is a Health Information Exchange Organization and is party to a Participation Agreement whereby it licenses information exchange technology to Covered Entity in order to allow Covered Entity to transfer electronic data, documents and records pertaining to patients for whom it provide healthcare services;

WHEREAS, pursuant to the Participation Agreement between Covered Entity and Business Associate, Covered Entity may disclose certain Protected Health Information ("PHI") to Business Associate, or Business Associate may create, receive, maintain, and/or use PHI received from Covered Entity, in connection with the provision of services to or for Covered Entity; and

WHEREAS, the parties are obligated under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and the Health Information Technology for Economic and Clinical Health Act ("HITECH") to protect the privacy and ensure the security of PHI in their possession and wish to enter into a written agreement to provide satisfactory assurances that Business Associate will appropriately safeguard PHI that it creates, receives, maintains, and/or uses in providing services under the Participation Agreement; and

WHEREAS, this Business Associate Agreement ("Agreement") sets forth the terms and conditions upon which Covered Entity will disclose PHI to Business Associate or will allow Business Associate to create, receive, maintain, and/or use PHI in connection the provision of services to or for Covered Entity.

NOW, THEREFORE, the parties agree as follows:

1. **Definitions.** For purposes of this Agreement, the following terms shall have the designated meanings. All other terms shall have the same meanings as in HIPAA or HITECH.
 - a. *"Administrative Safeguards"* shall mean administrative actions, policies and procedures to manage the selection, development, implementation and maintenance of security measures to protect Electronic PHI and to manage the conduct of Subcontractor Business Associate's workforce in relation to the protection of that information.
 - b. *"Breach"* The acquisition, access, use, or disclosure of Unsecured PHI in a manner not permitted by the HIPAA Privacy Rule that compromises the security or privacy of the PHI. To compromise the security or privacy of PHI means to pose a

significant risk of financial, reputational or other harm to the individual whose PHI is involved. Breach excludes (i) any unintentional acquisition, access, or use of PHI by a Workforce Member or person acting under the authority of a Covered Entity (PHCS) or a Business Associate, if such acquisition, access, or use was made in good faith and with the scope of authority and does not result in further use or disclosure in a manner not permitted by the Privacy Rule, (ii) any inadvertent disclosure by a person who is authorized to access PHI at a Covered Entity (PHCS) or Business Associate to another person authorized to access PHI at the same Covered Entity (PHCS) or Business Associate, or Organized Health Care Arrangement in which the Covered Entity (PHCS) participates, and the information received as a result of such disclosure is not further used or disclosed in a manner not permitted under the Privacy Rule, or (iii) a disclosure of PHI where a Covered Entity (PHCS) or Business Associate has a good faith belief that an unauthorized person to whom the disclosure was made would not reasonably have been able to retain such information. All Breaches are Reportable Events, however, not all Reportable Events are Breaches.

- c. *"Electronic PHI"* shall mean PHI that is transmitted or maintained in electronic media.
- d. *"HIPAA"* shall mean the Health Insurance Portability and Accountability Act of 1996, and any amendments thereto.
- e. *"HITECH"* shall mean the Health Information Technology for Economic and Clinical Health Act, which is Title XIII of the American Recovery and Reinvestment Act, and any amendments, regulations, rules and guidance issued thereto and the relevant dates for compliance.
- f. *"Individually Identifiable Health Information"* Information that is a subset of health information including demographic information collected from an individual, and: (1) Is created or received by a health care provider, health plan, employer, or health care clearing house; and (2) Relates to the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual; and (i) That identifies the individual; or (ii) With respect to which there is a reasonable basis to believe the information can be used to identify the individual. 45 CFR 160.103.
- g. *"Physical Safeguards"* shall mean physical measures, policies and procedures to protect Business Associate's electronic information systems and related buildings and equipment from natural and environmental hazards and unauthorized intrusion.
- h. *"Privacy Standards"* shall mean the Standards for Privacy of Individually Identifiable Health Information, 45 C.F.R. Parts 160 and 164.
- i. *"Protected Health Information"* or "PHI" Individually identifiable personal information in any form or medium about the past, present or future physical or mental health or condition of an individual, or the past, present or future payment for the provision of healthcare to an individual, [pursuant to federal and state law]. 45 CFR 160.103

- j. *"Secretary"* shall mean the Secretary of the United States Department of Health and Human Services.
 - k. *"Security Incident"* shall mean the attempted or successful unauthorized access, use, disclosure, modification or destruction of information or interference with system operations in an information system.
 - l. *"Security Standards"* shall mean the regulations with regard to security standards for health information, 45 C.F.R. Parts 160 and 164.
 - m. *"Technical Safeguards"* shall mean the technology, and the policy and procedures for its use, that protects Electronic PHI and controls access to it.
 - n. *"Transaction Standards"* shall mean the Standards for Electronic Transactions, 45 C.F.R. 160 and 162.
 - o. *"Unsecured PHI"* shall mean PHI not secured through the use of a technology or methodology specified in guidance by the Secretary that renders PHI unusable, unreadable, or indecipherable to unauthorized individuals.
2. **Services.** Covered Entity and Business Associate have entered into a Participation Agreement ("Participation Agreement") pursuant to which Business Associate provides services to Covered Entity that require the use and/or disclosure of PHI ("Services"). Except as expressly provided herein or as otherwise Required by Law, Business Associate may only use or disclose PHI for the purpose of providing the Services. Business Associate expressly agrees that any and all uses or disclosures of the PHI by Business Associate will be done in accordance with the terms of this Agreement and the provisions of all applicable federal and state laws and regulations, including without limitation, the HIPAA Privacy and Security Rules.
3. **Obligations and Activities of Business Associate.** Business Associate hereby agrees:
- a. not to disclose PHI other than as permitted in the Privacy and Security Rules and as permitted or required by this Agreement, the Participation Agreement, or as otherwise Required by Law;
 - b. to comply with any and all requirements of the Privacy and Security Rules that are applicable to Business Associates;
 - c. to use appropriate safeguards to prevent use or disclosure of PHI not expressly permitted by this Agreement, the Participation Agreement or as Required by Law;
 - c. to mitigate, to the extent practicable, any harmful effects of which Business Associate becomes aware that arise out of the use or disclosure of PHI by Business Associate that is in violation of this Agreement;

- d. to report to Covered Entity any use or disclosure of PHI not specifically permitted by this Agreement of which it becomes aware, including Breaches of Unsecured PHI as required by 45 C.F.R. 164.410;
- e. to ensure that any agent, including but not limited to any subcontractor or employee, to whom Business Associate provides any PHI received from Covered Entity, or created or received by Business Associate for or on behalf of Covered Entity, agrees to the same restrictions as apply through this Agreement to Business Associate with respect to the PHI, and that any such agreement between agent and Business Associate be memorialized in a written agreement that complies with the requirements of the Privacy and Security Rules; notwithstanding the foregoing, Business Associate shall only disclose that PHI to such agents as is reasonably necessary to perform the Services or to fulfill a specific function required or permitted under this Agreement;
- f. upon three (3) business days prior notice from Covered Entity and during all regular business hours of Business Associate, or at such times and upon such terms as the Secretary of Health and Human Services may require, to make available to the Secretary all internal practices, books and records, including but not limited to policies and procedures, relating to the use and disclosure of PHI received from, or created or received by Business Associate from or on behalf of Covered Entity, as is necessary to allow the Secretary to determine whether Covered Entity and/or Business Associate are in compliance with HIPAA, HITECH and/or any regulations promulgated thereunder;
- g. to make available to Covered Entity upon request the information required to provide an individual with access to PHI in accordance with 45 CFR 164.524;
- h. to the extent applicable, to provide Covered Entity, an individual, or an individual's designee with the information necessary to satisfy Covered Entity's obligations with respect to an individual's request for an electronic copy of PHI;
- i. to make available PHI for amendment and incorporate any amendments to PHI in accordance with 45 CFR 164.526, as may be requested by Covered Entity;
- j. to document all disclosures of PHI and such other information related to the disclosure of PHI as may reasonably be necessary for Covered Entity to respond to any request by an individual for an accounting of disclosures of PHI in accordance with 45 CFR 164.528, and to make said information available to Covered Entity upon written request;
- k. to implement administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of Electronic PHI that Business Associate creates, receives, maintains or transmits

from or on behalf of Covered Entity, in accordance with 45 CFR Part 164, Subpart C, as same may be amended from time to time;

- l. to ensure that any agent, including without limitation any subcontractor, to whom Business Associate provides Electronic PHI created, received, maintained or transmitted from or on behalf of Covered Entity agrees to implement reasonable and appropriate safeguards to protect such Electronic PHI, and to comply with the Security Rule in all other ways applicable to said third party as a Business Associate;
 - m. to report to Covered Entity any Security Incident involving or impacting the Electronic PHI subject to the terms of this Agreement of which Business Associate becomes aware;
 - n. to make reasonable efforts to limit the PHI used, disclosed or requested by Business Associate to the Minimum Necessary to accomplish the purpose of the use, disclosure or request; and
 - o. to the extent that Business Associate is carrying out a function or providing a service intended to fulfill the regulatory obligations of Covered Entity, that Business Associate comply with the requirements of the Privacy Rule that apply to Covered Entity in the performance of such obligation.
3. **Permitted Uses and Disclosures by Business Associate.** Except as otherwise limited by this Agreement, Business Associate may use or disclose PHI to perform the Services, as set forth in the Service Agreement, provided that such use or disclosure, if made by Covered Entity, would not violate the Privacy or Security Rules.
4. **Specific Use and Disclosure Provisions.** Except as otherwise limited by this Agreement, Business Associate may:
 - a. use PHI for the proper management and administration of Business Associate or to carry out the legal responsibilities of Business Associate; and
 - b. disclose PHI for the proper business administration of Business Associate, provided that:
 1. any such disclosure is Required by Law, or
 2. Business Associate obtains reasonable assurances from the person to whom the information is disclosed ("Third Party") that (a) the PHI will remain confidential and will only be used or further disclosed for the purpose for which it was disclosed to such Third Party or as may otherwise be Required by Law, and (b) Third Party agrees to notify Business Associate of any instances of which the Third Party becomes aware in which the confidentiality of the PHI has been breached.

5. **Obligations of Covered Entity.** Covered Entity shall notify Business Associate of:
- a. any limitation(s) in the Notices of Privacy Practices of Covered Entity, to the extent that such limitation(s) may affect Business Associate's use or disclosure of PHI;
 - b. any changes in, or revocation of, permission by an individual to use or disclose PHI, to the extent that such change or revocation may affect Business Associate's use or disclosure of PHI; and
 - c. any restriction(s) on the use or disclosure of PHI that Covered Entity has agreed to, to the extent that such restriction(s) may affect Business Associate's use or disclosure of PHI.
6. **Breach Notification.** In the event of a Breach of Unsecured Protected Health Information maintained by Business Associate, Business Associate shall perform a risk assessment to determine if such Breach poses a significant risk of harm to the individual. If a significant risk of harm is determined to exist, Business Associate shall without unreasonable delay and no later than five (5) days from the date of discovery of the Breach, provide Covered Entity with written notice of such Breach, so that Covered Entity can provide individual notice as applicable. Said notice from Business Associate to Covered Entity shall contain the following information: (i) a brief description of what happened, the date of the Breach, if known, and the date of discovery; (ii) the type of Unsecured PHI involved in the Breach; and (iii) a description of what Business Associate is doing to investigate and mitigate the Breach and prevent future breaches. Business Associate will cooperate fully in any investigation by Covered Entity concerning the Breach and provide any additional information necessary for Covered Entity to fulfill their respective notice obligations.
7. **Term and Termination.**
- a. **Term.** This Agreement shall be effective as of the date first set forth above and shall terminate when all of the PHI provided by Covered Entity to Business Associate, or created or received by Business Associate on behalf of Covered Entity is destroyed or returned to Covered Entity, or, if it is not feasible to return or destroy the PHI, protections are extended to such information, in accordance with this Section 7.
 - b. **Termination by the Covered Entity for Cause.** If Business Associate breaches this Agreement, Covered Entity, in its sole discretion, may:
 1. provide Business Associate written notice that Business Associate has breached this Agreement and provide Business Associate an opportunity to cure the breach to the satisfaction of Covered Entity within ten (10)

days, after which time this Agreement and the Services Agreement shall be automatically terminated if the breach is not cured;

2. immediately terminate this Agreement and the Participation Agreement if Business Associate has breached a material term of this Agreement and cure is not possible; or
 3. if neither termination nor cure are feasible, Covered Entity shall report the violation to the Secretary.
- c. Termination by Business Associate. So long as the Participation Agreement by and between Covered Entity and Business Associate shall exist, Business Associate shall have no right to terminate this Agreement.
- d. Automatic Termination. This Agreement will automatically terminate, without any further action by the parties hereto, at such time as there is no longer a Participation Agreement by and between the parties hereto.
- e. Effect of Termination.
1. Except as provided in Section 7(e) (2) of this Agreement, upon termination of this Agreement for any reason, Business Associate shall return or destroy all PHI received from Covered Entity, or created or received by Business Associate for or on behalf of Primary Covered Entity. This provision shall apply to all PHI that is in the possession of any subcontractor or agent of Business Associate. Business Associate shall retain no copies of the PHI for its records.
 2. In the event that Business Associate believes that returning or destroying the PHI is not feasible, within three (3) days of any termination hereof Business Associate shall provide written notice to Covered Entity setting forth the conditions that Business Associate believes make return or destruction of the PHI not feasible. Within three (3) days of its receipt of such notice from Business Associate, Covered Entity shall determine whether, in its sole discretion, the return or destruction of the PHI is not feasible, and provide written notice to Business Associate of its decision. If Covered Entity determines that the return or destruction of PHI is not feasible, Business Associate shall extend the protections of this Agreement to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such PHI. In the event that Covered Entity determines, in its sole discretion, that it is feasible to return or destroy the PHI, Business Associate shall immediately comply with the provisions of Section 7(e)(i) of this Agreement. For the period during which Covered Entity and Business Associate are determining whether the return or

destruction of the PHI is feasible, Business Associate shall extend the protections of this Agreement to such PHI and limit use or disclosure of the PHI to those uses and disclosures necessary to determine whether the return or destruction of the PHI is feasible.

8. **Indemnification.** Business Associate hereby covenants and agrees to indemnify and hold harmless Covered Entity, its agents and representatives from and against any and all losses, costs, expenses, liabilities, claims, demands, judgments and its settlements of every nature that are actually incurred by Covered Entity, including without limitation reasonable attorneys' fees, which arise out of any use or disclosure of PHI not specifically permitted by this Agreement that is a result of Business Associate's negligence or willful conduct.

Covered Entity hereby covenants and agrees to indemnify and hold harmless Business Associate, its agents and representatives from and against any and all losses, costs, expenses, liabilities, claims, demands, judgments and its settlements of every nature that are actually incurred by Business Associate, including without limitation reasonable attorneys' fees, which arise out of any use or disclosure of PHI not specifically permitted by this Agreement that is a result of Covered Entity's negligence or willful conduct.

9. **Miscellaneous.**

- a. **Regulatory References.** Any reference made herein to any provision of law or regulation shall be a reference to such section as in effect and as same may be amended from time to time.
- b. **Amendment.** This Agreement may not be amended except in a writing signed by both parties hereto. Both parties hereto agree that this Agreement shall be amended to comply with any and all state or federal laws rules, or regulations, including without limitation any future laws, rules or regulations.
- c. **Interpretation.** Any ambiguity in this Agreement shall be resolved to permit the parties hereto to comply with the Privacy and Security Rules.
- d. **Successors and Assigns.** This Agreement and all rights and obligations hereunder shall be binding upon and shall inure to the benefit of the respective successors and assigns of both parties hereto.
- e. **Survival.** The respective rights and obligations of the parties set forth in Section 8 hereof shall survive any termination of this Agreement.
- f. **Notices.** All notices which are required to be given hereunder shall be in writing and shall be deemed to have been duly given (a) when delivered personally, (b)

the next business day following the day on which the same has been delivered prepaid to a nationally recognized overnight courier service, or (c) three (3) days after sending by registered or certified mail, postage prepaid, return receipt requested, in each case to the address first set forth above to the attention of the person signing below, or to such other person at such other address as the party may designate by giving notice.

- g. Severability. In the event that any provision of this Agreement is adjudged by any court of competent jurisdiction to be void or unenforceable, all remaining provisions hereof shall continue to be binding on the parties hereto with the same force and effect as though such void or unenforceable provision had been deleted.
- h. Waiver. No failure or delay in exercising any right, power or remedy hereunder shall operate as a waiver thereof; nor shall any single or partial exercise of any right, power or remedy hereunder preclude any other further exercise thereof or the exercise of any other right, power or remedy. The rights provided hereunder are cumulative and not exclusive of any rights provided by law.
- i. Entire Agreement. This Agreement and the Participation Agreement constitute the entire agreement between the parties hereto relating to the subject matter hereof, and supersede any prior or contemporaneous verbal or written agreements, communications and representations relating to the subject matter hereof.
- j. Choice of Law. This Agreement shall be governed, construed and interpreted in accordance with the laws of the State of Connecticut, without regard to such state's conflict of laws provisions.
- k. Counterparts, Facsimile. This Agreement may be signed in two or more counterparts, each of which shall be deemed an original and all of which taken together shall constitute one and the same instrument. A copy of this Agreement bearing a facsimile signature shall be deemed to be an original.

IN WITNESS WHEREOF, we have signed this Agreement.

Covered Entity

By: _____

Business Associate

By: _____

EXHIBIT C

HITE-CT Fees

Participant is establishing the following services with HITE-CT:

1. Direct account(s) (each user must have their own account)

Licensed practitioners _____

2. Portal accounts (each user must have their own account)

Licensed practitioners _____

3. Connect EMR (outpatient)

Licensed Outpatient Providers: _____

4. Connect Hospital Information System (inpatient)

Staffed Beds: _____

5. Connect External Health Information Exchange:

Staffed Beds: _____

Licensed Outpatient Providers: _____

6. Connect Ancillary System (Laboratory, Radiology, Analytics, Other)

of Systems: _____

Description of Fees:

1. Software License and Onboarding Fee (the “Onboarding Fee”): This is a one-time fee paid by Participant to cover software licenses, needs analysis, configuration, testing, and training of provider (train the trainer) required to onboard the Participant to the Exchange. Participant will pay a one-time Onboarding Fee of \$_____ to HITE-CT upon Participant’s execution of this Agreement. The Onboarding Fee is set by the HITE-CT board annually and is published at <http://www.hitect.org>.

HITE-CT will also provide the Participant with onboarding support including:

- Requirements and Capabilities Meeting(s)

- Kickoff Meeting
- Assistance with Use-case development
- Loading and configuration of HITE-CT provided software
- Limited consultation on provider side technical configuration based on prior experience or information known to HITE-CT
- Testing and verification of implemented solution
- Go-live monitoring and support

2. **PROGRAM FEE.** Participant will pay a program fee (the “**Program Fee**”) to HITE-CT in the amount of \$_____ per calendar year; provided, however, that the following discounts shall apply to each of the annual Fees for each of the following periods during which this Agreement is in effect:

From the [3 rd] anniversary of the Effective Date until the day before the [4 th] anniversary of the Effective Date	_____ %
From the [4 th] anniversary of the Effective Date until the day before the [5 th] anniversary of the Effective Date	_____ %
From the [5 th] anniversary of the Effective Date until the day before the [6 th] anniversary of the Effective Date	_____ %
From the [6 th] anniversary of the Effective Date until this Agreement is terminated	_____ %

The annual Program Fee covers the cost of hosting the Exchange hardware (including hardware maintenance), operations and maintenance of Exchange software, customer support/help desk operations, and general administrative costs associated with HITE-CT operations.

If this Agreement is in effect for part of a partial calendar year, the Program Fee will be prorated on a daily basis. HITE-CT may modify the Program Fee from time to time, but such modification will not become effective until Participant has received at least sixty (60) days advance written notice of such modification; provided, however, that the foregoing fees shall apply to any modified Program Fees. Such notice will specify the effective date of the modified Program Fee.

3. **TECHNICAL SUPPORT SERVICE FEE.** Participant may purchase additional services from HITE-CT beyond what is covered as part of the standard onboarding process. Participant will pay HITE-CT for any such technical support services at a rate not to exceed \$250 per hour. The actual rate will be established by HITE-CT at the time of the service request. Services available include support for custom interface development, data transformation services, data mapping, eMPI resolution, Participant specific provider directory maintenance, data integration service, business and clinical process design and/or redesign services, custom training. Technical support will be requested by submitting a Statement of Work to HITE-CT. HITE-CT will provide a written proposal and cost estimate for Participant to consider. HITE-CT’s proposal will include

payment information, payment schedule, and any other fees (including the any unique or specialized software and hardware required).

4. **LIMITATIONS.** HITE-CT will support the original implementation over the life-cycle of this Agreement including configuration and testing of new software releases of the same product. New products and services offered by HITE-CT are not necessarily covered by the Fees outlined in this Agreement. Similarly, if the Participant makes significant changes to their end of the interface (a new EMR product for example), an additional fee to reestablish connection to the Exchange may be charged as outlined in Paragraph 3 above.

5. **PAYMENT.** The Program Fee shall be payable in advance on or before the fifth (5th) day of each calendar year. The Onboarding Fee is due to HITE-CT within thirty (30) days after the Participant's execution of this Agreement. Any payment of any fees due and payable under this Agreement, including without limitation the Onboarding Fees and Program Fees (collectively, the "**Fees**") not made within fifteen (15) days after the due date therefor shall accrue interest at the lesser of 1% per month or the highest rate allowed by applicable law.